

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
 )  
Amendment to the Commission's ) WT Docket No. 95-157  
Rules Regarding a Plan for )  
The Costs of Microwave Relocation )

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To: The Commission

**COMMENTS OF THE  
ASSOCIATION OF AMERICAN RAILROADS**

The Association of American Railroads ("AAR"), by its undersigned counsel and pursuant to Section 1.405 of the Rules of the Federal Communications Commission, respectfully submits these Comments in response to the Further Notice of Proposed Rule Making ("Further Notice") in the above-referenced proceeding. The Commission requested comment on whether microwave incumbents who relocate their own links should be permitted to collect reimbursement in accordance with the microwave relocation cost-sharing plan. The Commission also sought comment on whether the length of the voluntary and mandatory negotiation periods in the microwave relocation rules should be changed. For the reasons set forth below, AAR supports the proposal to allow incumbents to participate in the cost-sharing plan and opposes the proposal to alter the length of the negotiation periods.

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**I. Incumbents Should be Allowed to Participate in the Cost-Sharing Plan**

AAR agrees with commenters to the Cost-Sharing Notice<sup>1/</sup> that there may be circumstances in which incumbents may prefer to relocate some of their own links in order achieve a system-wide relocation rather than wait for PCS licensees to relocate their links, one at a time, as they build out their PCS systems. As a matter of equity, PCS licensees who benefit from an incumbent's relocation of its own links should be required to reimburse the incumbent for the relocation under the cost-sharing plan, just as they would be required to reimburse another PCS licensee if it had paid for relocating the links.

**II. The Length of the Negotiation Periods Should not be Changed**

AAR opposes any suggestion to change the length of either the voluntary or the mandatory negotiation periods. There has been no showing that the existing negotiation periods recently adopted by the Commission in the ET Third Report and Order<sup>2/</sup> have been inadequate to promote relocation negotiations between incumbents and PCS licensees. There has also been no showing that the current length of the voluntary negotiating period has any relationship to the rapidity of relocation negotiations. To the contrary, as noted by the Commission itself in the First

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1/ Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, Notice of Proposed Rulemaking, WT Docket No. 95-157, 11 FCC Rcd. 1923 (1995) ("Cost-Sharing Notice").

2/ Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, Third Report and Order and Memorandum Opinion and Order, 8 FCC Rcd. 6589 (1993) ("ET Third Report and Order").

Report and Order, many microwave incumbents have already successfully negotiated voluntary relocation agreements with A and B block licensees.<sup>3/</sup>

In fact, AAR's member railroads are currently conducting extensive relocation negotiations with A and B block licensees. These discussions were initiated during the voluntary negotiation period<sup>4/</sup> and likely will be concluded before the end of that period (April 5, 1997). These negotiations have not been delayed in any way by the two-year voluntary negotiation period.

### **III. Conclusion**

For the reasons set forth above, AAR supports the suggestion to allow incumbents to participate in the cost-sharing plan. AAR urges the Commission to reject, however, any proposed changes to the negotiation periods adopted by the

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3/ In the Matter of Amendment to the Commission's Rules Regarding a Plan for Sharing The Costs of Microwave Relocation, WT Docket No. 95-157, First Report and Order and Further Notice of Proposed Rulemaking, FCC 96-196 (April 30, 1996) ("First Report and Order" or "Further Notice") at ¶ 13.

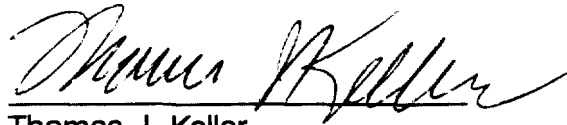
4/ While the voluntary period for A and B block licensees began on April 5, 1995, some AAR members were not contacted by PCS licensees until July or August of 1995. Thus, relocation negotiations between these incumbents and initial PCS licensees did not begin until the voluntary negotiation period was four months old. This delay was no fault of the incumbents.

Commission a short time ago. The record shows that the existing relocation rules are sufficient to promote voluntary relocation negotiations between incumbents and PCS licensees.

Respectfully submitted,

**ASSOCIATION OF AMERICAN RAILROADS**

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May 28, 1996

### CERTIFICATE OF SERVICE

I, Tina Harris, hereby certify that the foregoing "Comments of the Association of American Railroads" was served by first-class mail, postage prepaid, this 28th day of May, 1996 on the following persons:

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